IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16809 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJI GEORGE CHRISTIAN THO' SOSSAMMA ABRAHAM

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16809 of 2003

MR TS NANAVATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR LR PUJARI Ld. AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Mr.T.S.Nanavaty, learned advocate for the

petitioner and Mr.L.R.Pujari, learned AGP for the respondent no.3.

2. It is submitted by Mr.Nanavaty, learned advocate for the petitioner that in the cause title of the petition, petitioner's name be permitted to be shown and amended as "Aji P. George Christian" in place of name "Aji George Christian". Request granted. Amendment be carried out accordingly.

3. By this petition under Article 226 of the Constitution of India, the petitioner (detenu) challenges the Detention Order No.PCB/DTN/PASA/55/2003 dated 17.3.2003 (Annexure-A) passed by respondent no.1.

4. It is submitted by Mr.T.S.Nanavaty that identically placed detenus challenged the order of detention passed under Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and that the detention order passed against them have been quashed and set aside by this Court in Special Civil Application No.6474 of 2003 decided on 30.7.2003, and in Special Civil Application No.10177 of 2003 by order dated 1.9.2003.

5. It is not disputed that on the same set of facts and grounds the present petitioner as well as the petitioners in the aforesaid SCAs came to be detained under Section 3 of the PASA Act.

6. The impugned detention order suggests that filing of II C.R. No.3003 of 2003 dated 16.2.2003 for the offences under Sections 3, 4, 5, 7 and 9 of the Suppression of Immoral Traffic Act. This is the solitary prosecution on the basis of which the impugned detention order came to be passed.

It is stated by Mr.Nanaaty that after the passing of the impugned detention order, the petitioner has been enlarged on bail by the Criminal Court concerned. It is submitted that since the petitioner was in judicial custody there was no question of any apprehension that the petitioner would indulge in the same acts again.

7. Reliance has been placed on the decision in the case of Amritlal and Others Vs. Secretary, Ministry of Finance,2001 SCC (Cri.) 341 wherein it has been held that "the detenu already in jail - Detaining Authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not

merely about likelihood of his moving application for bail -- In absence of such satisfaction detention order cannot be sustained - Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances Act,1988, S.3(1)".

8. Since on the same set of allegations, two detenus have been released by quashing their detention order in the aforesaid two SCAs, for the reason of parity the present petitioner also would be entitled to be released and the impugned detention order quashed.

9. In the result, the petition is granted. The impugned order of detention dated 17.3.2003 (Annexure-A) passed by respondent no.1 against the petitioner detenu is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)